

### **REMARKS**

This Amendment responds to the Office Action mailed on October 1, 2004.

The Examiner rejected claims 6, 8, 12, 19, and 21 under 35 U.S.C. § 112, second paragraph, contending that each of the rejected claims failed to recite essential structural cooperation of elements. Claim 21 has been canceled. Each of the remaining rejected claims has been amended to overcome the Examiner's rejection.

The Examiner rejected claim 24 under 35 U.S.C. § 112, second paragraph as failing to provide antecedent basis for the term "said recipient." Claim 24 has been amended to overcome this rejection.

The Examiner rejected claims 1-5, 10, and 13-15 under 35 U.S.C. § 102(e) as being anticipated by Hutchison et al., U.S. Patent No. 6,757,736 (hereinafter Hutchison). Hutchison discloses a data distribution service for updating retail checkout terminals from a network server. The server first determines the number of terminals logged on to the network that are capable of being updated. If the number of such terminals is equal to or less than four, the server updates the terminals using the TCP point-to-point protocol (see col. 3 lines 55-59). If the number of such terminals is more than four, the server updates the terminals using the UDP connectionless, simultaneous broadcast protocol. This method is markedly different from those disclosed by the present application, which discloses that data to be transmitted to a plurality of recipients may be transferred using a method that initially broadcasts the data, but switches to a point-to-point protocol when a predetermined condition is achieved.

Independent claim 1 has been amended to recite the limitations of "broadcasting unreceived data to said plurality of recipients . . . until a time for the completion of transferring said unreceived data by point-to-point communication with said recipients obtains a predetermined relationship to a time for the completion of said broadcasting and thereafter, completing said transferring of said unreceived data by point-to-point communication with at least one of said plurality of recipients." These limitations are not disclosed by Hutchison, et al., which does not disclose that data may be transferred by initially broadcasting the data, but *completing* the transfer of the data by point-to-point communication. Instead, Hutchison, at the time any given update is initiated, decides whether to broadcast the data or send it by point-to-

point communication based solely on the number of recipients, and completes the transfer of data using the same protocol throughout transmission.

The applicant notes that Hutchison may inferentially disclose a scenario where a data update is initially broadcast to a plurality of more than four terminals, where one to four terminals are at that time offline and incapable of being updated, such that the offline terminal terminals are later updated by point-to-point transmission. Nonetheless, independent claim 1 distinguishes over this inferential disclosure because claim 1 contains the limitations of (1) broadcasting data to a plurality of recipients and (2) completing said transferring by point-to-point transmission with *at least one of said plurality*. At best, Hutchison discloses completing transmission of data to terminals that were not included in the plurality of terminals that received data by broadcasting. The applicant also notes that, to the extent the Examiner is reading Hutchison as disclosing an inferred scenario where a first update is transferred at a time when all terminals (and more than four) are online and thus broadcast, then the next, separate update is transferred when all but four or fewer terminals are online and thus sent by point-to-point communication, independent claim 1, as amended, distinguishes over this inferred scenario because independent claim specifies that data is broadcast “until a time for *the completion of* transferring said unreceived data by point-to-point communication with said recipients obtains a predetermined relationship to a time for *the completion of* said broadcasting and thereafter, completing said transferring of said unreceived data by point-to-point communication,”

For the foregoing reasons, independent claim 1 patentably distinguishes over Hutchison, as do claims 2-5, which depend from independent claim 1. Therefore, the Examiner’s rejection of claims 1-5 based on Hutchison should be withdrawn.

Independent claim 10 has been amended to include limitations that distinguish over Hutchison for the same reasons as do independent claim 1. Moreover, independent claim 10 includes the additional limitation of “polling at least one said recipient to identify unreceived data.” This limitation is not disclosed by Hutchison, which merely discloses that prospective recipients may be polled to determine the number then online and capable of receiving updates. *See* Hutchison, col. 8 lines 23-27. The Applicant notes that, at the time Hutchison polls prospective recipients, the transfer of updates has yet to be initiated, hence it would be pointless to poll recipients to “identify unreceived data” since, at that time, all data would be unreceived

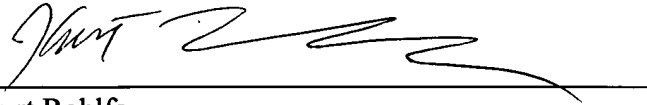
by all recipients. Therefore, the Examiner's rejection of claim 10, as well as dependent claims 13-15, should be withdrawn.

The Examiner rejected claims 6-9, 11, 12, and 16-24 under 35 U.S.C. § 103(a) as being obvious in view of the combination of Hutchison with Iwamura et al., U.S. Patent No. 6,396,814. Iwamura discloses a method of distributing data to a large number of recipients by first dividing the recipients into groups, selecting one or more representative recipients from each group, and distributing data to each of the representative recipients which then re-distribute the data to other recipients in their respective groups by direct, or point-to-point communication. See *Iwamura* at col 15, lines 54-56. Hutchison and Iwamura may not be combined in the manner suggested by the Examiner, because there is no motive suggested in the prior art for such a combination. The applicant notes that Hutchison discloses that data updates may be broadcast to a plurality of recipients numbering more than four, and transferred to a plurality of recipients numbering less than four by point-to-point transmission. In either of these circumstances, it would be useless to subdivide the plurality of Hutchison's intended recipients into groups and select representative recipients of each group, as taught by Iwamura. First, if the total number of intended recipients is less than four, such that Hutchison discloses transmission by point-to-point communication, there would be no benefit to subdividing such a small number of recipients and selecting a representative from each group. Conversely, if the number of online recipients is more than four, Hutchison teaches that the most efficient form of transmission is a simultaneous broadcast to all intended recipients. Iwamura's system, however, uses a connection-oriented point-to-point transmission system with handshakes, where the subdivision into groups (1) allows forward messages to be relayed throughout the network by representative devices of respective groups, and (2) reduces the number of return "handshake" acknowledgments that need to be handled by each device in the network.. See, e.g. *Iwamura*, at col. 15 lines 5-45 and FIG. 3. This system is useless, however, if the originating (sending) device simultaneously broadcasts the message to all intended recipients, as would be the case if Hutchison's disclosed method was used with more than four recipients. Therefore, in neither of the two scenarios posited by Hutchison, would it make sense to utilize the teachings of Iwamura. Therefore, the Examiner's rejection of claims 6-9, 11, 12, and 16-24 based upon the combination of Hutchison and Iwamura should be withdrawn.

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Amdt. dated March 30, 2005  
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In view of the foregoing amendments and remarks, the Applicant respectfully requests reconsideration and allowance of claims 1-24.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt", followed by a long, horizontal, wavy line that extends to the right.

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